

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 23, 2009

**JAMES R. COVINGTON v. JIM WORTHINGTON, WARDEN**

**Appeal from the Criminal Court for Morgan County  
No. 9128 E. Eugene Eblen, Judge**

---

**No. E2008-02332-CCA-R3-HC - Filed July 6, 2009**

---

The petitioner, James R. Covington, challenges the Morgan County Criminal Court's dismissal of his petition for writ of habeas corpus. He argues that his three consecutive three-year sentences are illegal because they run in direct contravention of Tennessee Code Annotated section 40-35-115. Because the petitioner states no ground upon which relief may be granted, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and NORMA MCGEE OGLE, J., joined.

Robert L. Vogel, Knoxville, Tennessee, for the appellant, James Richard Covington.

Robert E. Cooper, Jr., Attorney General and Reporter; and Leslie E. Price and John Bledsoe, Assistant Attorneys General, for the appellee, State of Tennessee.

**OPINION**

The petitioner pleaded guilty in the Loudon County Criminal Court to three separate charges of burglary in 2001.<sup>1</sup> The trial court ordered three-year sentences for each burglary conviction and ordered that the three sentences run consecutively for an effective nine-year sentence. The trial court sentenced the defendant to community corrections, which he later violated, resulting in his incarceration in the Tennessee Department of Correction for the balance of his sentence.

On March 14, 2005, the petitioner filed his petition for writ of habeas corpus. He argued that the trial court's imposition of consecutive sentences ran in "direct contravention" of statutory authority and that the trial court's determination of facts in ordering consecutive sentences ran afoul of his constitutional rights as defined by *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct.

---

<sup>1</sup>The defendant also pleaded guilty to theft charges, the sentences for which ran concurrently to the accompanying burglary sentences.

2348 (2000). After conducting a hearing on September 15, 2008, the habeas corpus court determined that “the petition will have to be denied under the case law.” The court entered an order granting the State’s motion to dismiss the petition for writ of habeas corpus on October 8, 2008. The petitioner filed a timely notice of appeal on October 20, 2008.

On appeal, the petitioner abandons his constitutional grounds for relief in light of our supreme court’s decision in *State v. Allen*. See 259 S.W.3d 671, 688 (Tenn. 2008) (holding that “*Apprendi* and *Blakely* should be construed narrowly such that they do not apply to Tennessee’s statutory scheme for imposing consecutive sentences”). Thus, the petitioner’s sole argument on appeal is that his sentence violated Code section 40-35-115.<sup>2</sup> He argues that the trial court failed to make specific factual findings pursuant to statute and that his sentence is, therefore, illegal.

“The determination of whether habeas corpus relief should be granted is a question of law.” *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). Our review of the habeas corpus court’s decision is, therefore, “de novo with no presumption of correctness afforded to the [habeas corpus] court.” *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)).

---

<sup>2</sup>Tennessee Code Annotated 40-35-115 reads, in relevant part:

(b) The court may order sentences to run consecutively if the court finds by a preponderance of the evidence that:

(1) The defendant is a professional criminal who has knowingly devoted the defendant’s life to criminal acts as a major source of livelihood;

(2) The defendant is an offender whose record of criminal activity is extensive;

(3) The defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant’s criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;

(4) The defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high;

(5) The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant’s undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;

(6) The defendant is sentenced for an offense committed while on probation; or

(7) The defendant is sentenced for criminal contempt.

T.C.A. § 40-35-115(b) (1997).

The writ of habeas corpus is constitutionally guaranteed, *see* U.S. Const. art. I, § 9, cl. 2; Tenn. Const. art. I, § 15, but has been regulated by statute for more than a century, *see Ussery v. Avery*, 432 S.W.2d 656, 657 (Tenn. 1968). Tennessee Code Annotated section 29-21-101 provides that “[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” T.C.A. § 29-21-101 (2000). Despite the broad wording of the statute, a writ of habeas corpus may be granted only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. *See Ussery*, 432 S.W.2d at 658; *State v. Galloway*, 45 Tenn. (5 Cold.) 326 (1868). The purpose of the state habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsom v. Henderson*, 424 S.W.2d 186, 189 (Tenn. 1968). A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in the petitioner’s case the trial court apparently had jurisdiction over the actus reus, the subject matter, and the person of the petitioner, the petitioner’s jurisdictional issues are limited to the claims that the court was without authority to enter the judgments. *See Anglin*, 575 S.W.2d at 287 (“‘Jurisdiction’ in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned.”); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

The petitioner’s claim fails to establish grounds for relief by writ of habeas corpus. Except in those circumstances when a statute mandates consecutive sentences for multiple offenses, *see, e.g., State v. Burkhart*, 566 S.W.2d 871, 872-73 (Tenn. 1978) (declaring a concurrent sentence void when statute expressly mandated consecutive sentencing for the conviction offense), the imposition of consecutive sentences lies within the discretion and jurisdiction of the sentencing court, *see* T.C.A. 40-35-115(b) (stating that “[t]he court *may* order sentences to run consecutively . . . .”) (emphasis added). Generally, a claim alleging “factual or legal errors” within a sentencing court’s jurisdiction is not a cognizable ground for habeas corpus relief. *Edwards v. State*, 269 S.W.3d 915, 924 (Tenn. 2008) (“[H]abeas corpus relief is not available to remedy non-jurisdictional errors . . . .”). The petitioner’s argument does not establish that the entered judgments of consecutive sentences were “facially invalid because the court did not have the statutory authority to render such judgment[s].” *See Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998) (citing *Archer*, 851 S.W.2d at 161). Thus, the petitioner has not established that his sentences were void or expired as required for habeas corpus relief.

In light of our review, we affirm the habeas corpus court’s dismissal of the petition for writ of habeas corpus.

---

JAMES CURWOOD WITT, JR., JUDGE